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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/764,280      | 01/23/2004  | Gary Malcolm Briscoe | 7423                | 9687             |

7590 10/11/2006

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| EXAMINER |
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PICKETT, JOHN G

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3728

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/764,280

Applicant(s)

BRISCOE, GARY MALCOLM

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ ~~This action is non-final.~~
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5,7-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5,8-10 and 12 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The finality of the Office Action of 31 July 2006 is withdrawn for entry of the After Final Amendment of 28 August 2006. Claims 2-5, 7-10, and 12 are pending in the application. Claims 1, 6, and 11 have been canceled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

3. Applicant's amendment to correct the claim dependency has overcome the rejections under 35 U.S.C. 112, 2<sup>nd</sup> paragraph.

#### ***Claim Rejections - 35 USC § 102***

4. Claims 2-5, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schellenberg (US 4,742,935; previously provided).

Claim 12: Schellenberg discloses a blister pack **1** comprising a front part **2/3/4** having a recessed portion **2/3**; a back part **7/14** with a relieved portion **7** arranged as claimed, the back part finishing at flange **14**; and cooperating locating means **14/15** having an abutment **15** extending inwards from the inner wall of the recessed portion **2** to at least as great an extent as an abutment **14** extending outwards from the outer wall of relieved portion **7** and none of the back part extending outwardly of the abutment.

Claim 2: Schellenberg discloses flange **3**.

Claim 3: Schellenberg discloses aperture **12**.

Claim 4: Schellenberg discloses deformation **4**.

Claim 5: Schellenberg discloses continuous ridge **15**.

Claim 9: Schellenberg discloses a stepped recess forming a plinth **3** and outer flange **4**.

Claim 10: Schellenberg discloses snap action inter-engagement.

***Claim Rejections - 35 USC § 103***

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schellenberg.

Schellenberg discloses the claimed invention except for the translucent material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the container with a translucent material in order to hide the container contents from view. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Allowable Subject Matter***

6. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### ***Response to Arguments***

8. In applicant's arguments of 28 August 2006, a very broad definition of the back part is presented (see page 5, last paragraph of the arguments). The applicant appears to allow for structure beyond the abutment portion of the back part by defining the back part as finishing at the abutment. In accordance with MPEP 2111.01, during examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). In applying the prior art, the claims should be construed to encompass all definitions that are consistent with applicant's use of the term. See *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1818 (Fed. Cir. 2002). Accordingly, using this new, broad definition, Schellenberg discloses a back part that finishes at abutment 14.

### ***Conclusion***

9. The use of this definition, if presented in the amendment of 8 May 2006, would have resulted in a Final Rejection of the claims using the Schellenberg reference previously applied in the rejection of 13 December 2005. Accordingly, **THIS ACTION IS**

**MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Greg Pickett  
Examiner  
2 October 2006

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700